

SECTION H: SPECIAL CONTRACT REQUIREMENTS

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H-1 BUILDER'S RISK INSURANCE

The Contractor shall, from the start of vessel construction until preliminary acceptance by the government, provide and maintain in force a Builder's Risk Policy on behalf of the Government covering the vessel and all material and equipment for each vessel to be provided under ITEMS 0001 through 0007 and if exercised, ITEM 0008, 0015, or 0022 and their respective associated CLINs; provided, that for ITEM 0001 the cost of detail design shall be excluded from the insured value. The Contractor agrees that the price of this contract includes the price of the insurance required by this provision. A copy of the policy shall be provided to the Government by the Contractor, prior to and as a condition of the Government's issuance of a notice to proceed after contract award.

H-2 LIENS AND TITLE

(a) Any and all partial and progress payments made hereunder on account of the vessels and the materials and equipment therefor shall be secured, when made, by a lien in favor of the Government upon such material and equipment on account of all payments so made, except to the extent that the Government, by virtue of any other requirement of this contract, or otherwise, shall have valid title to such material and equipment as against other creditors of the Contractor. If such property is not identified by marking or segregating, the Government shall be deemed to have a lien upon a proportionate part of any mass of property with which such property is commingled. Any lien provided for by virtue of this requirement is paramount to all other liens under the provisions of 10 U.S.C. Sec 2307. Upon completion and delivery of the vessels, said lien shall be discharged as to any materials and equipment which have not been included in the vessels and which are no longer required therefor.

(b) The Contractor shall immediately discharge or cause to be discharged any lien or rights in rem of any kind, other than in favor of the Government, which at any time exists or rises with respect to the machinery, fittings, equipment or materials for the vessels. If any such lien or

right in rem is not immediately discharged, the Government may discharge or cause to be discharged said lien or right in rem at the expense of the Contractor.

(c) Title to the vessels under construction shall be in the Government and title to all materials and equipment acquired for each vessel shall vest in the Government upon delivery thereof to the plant of the Contractor or other place of storage selected by the Contractor, whichever of said events shall first occur; provided, that the CONREP may, by written direction, require that title shall vest in the Government upon delivery of such materials and equipment to the carrier for transportation to the plant of the Contractor or other place of storage selected by the Contractor. The amount of any freight charges, transportation, taxes or other costs which would have been paid by the Contractor, either directly or as an element of any subcontract cost, and which the Contractor shall not be required to pay as a result of such earlier vesting of title and any use of Government bills of lading, shall be determined and treated as though resulting from a change order and the contract price reduced accordingly. Upon completion of the vessels, or with the approval of the CONREP at any time during the construction of the vessels, all such materials and equipment which have not been included therein and which are agreed between the Contractor and the CONREP to be no longer required therefor, except materials and equipment which were furnished by the Government or the cost of which has been reimbursed by the Government to the Contractor, shall become the property of the Contractor; provided, however, that models, mockups, plans and other items which the Contractor is expressly required to construct, prepare, or furnish shall remain the property of the Government. Upon completion of the contract, or at such earlier date as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of property not consumed in the performance of this contract (including any resulting scrap) or not theretofore delivered to the Government, the cost of which has been reimbursed by the Government to the Contractor apart from the fixed price. The Contractor shall deliver or make such other disposal of such property as may be directed or authorized by the Contracting Officer. Recoverable scrap from such property shall be reported in accordance with such procedure and in such form as the Contracting Officer may direct. The net proceeds of any such disposal shall be credited to the Government and shall be paid in such manner as the Contracting Officer may direct. For the purpose of this requirement, "net proceeds" means actual amount collected from such sale of disposal less sales, collection fees and other reasonable related expenses.

H-3 NOTIFICATION OF CHANGES

(a) Definitions. As used in this requirement, the term "Contracting Officer" does not include any representative of the Contracting Officer whether or not such representative is acting within the scope of his authority nor does it include any other individuals or activities that in any way communicate with the Contractor. As used in this requirement, the term "conduct" includes both actions and failures to act, and includes the furnishing of, or the failure to furnish, any item under any provision of this contract.

(b) Notice. The primary purpose of this requirement is to obtain prompt reporting of any conduct which the Contractor considers would constitute or would require a change to this

contract. The parties acknowledge that proper administration of this contract requires that potential changes be identified and resolved as they arise. Therefore, except for changes identified as such in writing and signed by the Contracting Officer, the Contractor shall notify the Contracting Officer of any conduct which the Contractor considers would constitute or would require a change to this contract. Such notice shall be provided promptly, and in any event within thirty (30) calendar days from the date the Contractor identifies any such conduct. The Notice shall be written and shall state, on the basis of the most accurate information available to the Contractor:

- (i) The date, nature, and circumstances of the conduct regarded as a change;
- (ii) The name, function, and activity of the individuals directly involved in or knowledgeable about such conduct;
- (iii) The identification of any documents and the substance of any oral communication involved in such conduct;
- (iv) The particular elements of contract performance for which the Contractor might seek an equitable adjustment under this requirement, including:

- (1) What ship(s) have been or might be affected by the potential change;
- (2) To the extent practicable, labor or materials or both which have been or might be added, deleted, or wasted by the potential change;
- (3) To the extent practicable, the Contractor's preliminary order of magnitude estimate of cost and schedule effect of the potential change; and
- (4) What and in what manner are the particular technical requirements or contract requirements regarded as changed.

(c) Continued Performance. Except as provided in paragraph (f) below, following submission of notice, the Contractor shall take no action to implement a potential change until advised by the Contracting Officer in writing as provided in (d) below, unless the potential change was previously directed by the Contracting Officer, in which case the Contractor shall conform therewith. Nothing in this paragraph (c) shall excuse the Contractor from proceeding with contract work other than implementation of the potential change or from proceeding in accordance with directions issued by the Contracting Officer.

(d) Government Response. The Contracting Officer shall promptly, and in any event within twenty-one (21) calendar days after receipt of Notice, respond thereto in writing. In such response, the Contracting Officer shall either:

- (i) Confirm that the conduct of which the Contractor gave notice would constitute a change, and when necessary, direct the mode of further performance, or;

- (ii) Countermand any conduct regarded by the Contractor as a change, or;
- (iii) Deny that the conduct of which the Contractor gave notice would constitute a change and, when necessary, direct the mode of further performance, or;
- (iv) In the event the Contractor's notice information is inadequate to make a decision under (i), (ii) or (iii) above, advise the Contractor what additional information is required. Failure of the Government to respond within the time required above shall be deemed a countermand under (d)(ii).
- (e) **Equitable Adjustments.** Equitable adjustments for changes confirmed or countermanded by the Contracting Officer shall be made in accordance with the clause of this contract entitled "CHANGES", or any other requirement of this contract which provides for an equitable adjustment.
- (f) **Special Procedures.** Paragraph (c) provides that the Contractor is to take no action to implement a potential change pending the Contracting Officer's response to the Contractor's notice of the potential change, except where specifically directed by the Contracting Officer. In special situations, however, where
 - (1) The circumstances do not allow sufficient time to notify the Contracting Officer of the facts prior to the need to proceed with the work, and;
 - (2) The work must proceed to avoid hazards to personnel or property or to avoid additional cost to the Government, the Contractor may proceed with work in accordance with the potential change. In such special situations, the Contractor shall advise the Contracting Officer in writing within ten (10) days of the conduct giving rise to the potential change that the Contractor has proceeded and shall describe the nature of the special situation which required proceeding prior to notification. Within thirty (30) calendar days of the conduct giving rise to the potential change, the Contractor shall provide notice as required in (b) above. The Contracting Officer shall respond as set forth in (d) above. If the Contracting Officer determines that the conduct constitutes a change and countermands it, the Contractor shall be entitled to an equitable adjustment for performance in accordance with that change prior to the countermand including performance resulting from the countermand.
- (g) When the Contractor identifies any conduct which may result in delay to delivery of the ship(s), the Contractor shall promptly so inform the Contracting Officer thereof prior to providing the notice required by paragraph (b) above.

H-4 OTHER CHANGE PROPOSALS

- (a) The Contracting Officer, in addition to proposing engineering changes pursuant to other requirements of this contract, and in addition to issuing changes pursuant to the clause of this contract entitled "CHANGES", may propose other changes within the general scope of this contract as set forth below. Within forty-five (45) days from the date of receipt of any such

proposed change, or within such further time as the Contracting Officer may allow, the Contractor shall submit the proposed scope of work, plans and sketches, and its estimate of: (A) the cost, (B) the weight and moment effect, (C) effect on delivery dates of the vessel(s), and (D) status of work on the vessels affected by the proposed change. The proposed scope of work and estimate of cost shall be in such form and supported by such reasonably detailed information as the Contracting Officer may require. Within sixty (60) days from the date of receipt of the Contractor's estimate, the Contractor agrees to either (A) enter into a supplemental agreement covering the estimate as submitted, or (B) if the estimate as submitted is not satisfactory to the Contracting Officer, enter into negotiations in good faith leading to the execution of a bilateral supplemental agreement. In either case, the supplemental agreement shall cover an equitable adjustment in the contract price, including an equitable adjustment for the preparatory work set forth above, scope, and all other necessary equitable adjustments. The Contractor's estimate referred to in this subparagraph shall be a firm offer for sixty (60) days from and after the receipt thereof by the Contracting Officer having cognizance thereof, unless such period of time is extended by mutual consent.

(b) Pending execution of a bilateral agreement or the direction of the Contracting Officer pursuant to the "CHANGES" clause, the Contractor shall proceed diligently with contract performance without regard to the effect of any such proposed change.

(c) In the event that a change proposed by the Contracting Officer is not incorporated into the contract, the work done by the Contractor in preparing the estimate in accordance with subparagraph (a) above shall be treated as if ordered by the Contracting Officer under the "CHANGES" clause. The Contractor shall be entitled to an equitable adjustment in the contract price for the effort required under subparagraph (a), but the Contractor shall not be entitled to any adjustment in delivery date. Failure to agree to such equitable adjustment in the contract price shall be a dispute within the meaning of the clause of this contract entitled "DISPUTES" (FAR 52.233-1).

H-5 PROGRESS PAYMENTS (PERCENTAGE OF COMPLETION)

Progress payments on account of the Contract shall be made by the Contracting Officer to the Contractor as the Contract work progresses. All progress payments shall be subject to a retainage of five percent (5%). The amounts of such payments shall be determined by; (a) dividing the contract price for CLIN 0001 into a set amount of points (10,000), representing the total cost of the labor by SWBS element as presented in the Contractor's final price proposal, and measuring said progress by the percent of completion of said portions of the Contract work, as certified by the Contractor subject to the approval of the CONREP, and (b) dividing the contract price for CLIN 0001 material into a set amount of points(10,000) representing the total cost of material by SWBS element as presented in the Contractor's final price proposal, and measuring said progress by the amount of material paid for as shown by payment made by cash, check or other forms of actual payment as certified by the Contractor subject to approval of the CONREP.

In addition to progress payments under Item 0001, the Contracting Officer will make payments to the Contractor for work completed by the Contractor under Items 0002 through 0007, if exercised or ordered, following certification of completion of the work by the Contractor subject

to the approval of the CONREP. For work under CLINs 0002 through 0007 for which work is not yet complete, the Contractor must submit to the CONREP, within 15 days after each calendar quarter for approval, a revised 10000 point weighting of the CLIN 001 progressing system to include all labor and material costs exercised or ordered under CLINs 002 through 0007 from the previous calendar quarter. The revised weighting may, within a SWBS element, reallocate CLIN 0001 labor and material costs as determined to be necessary by the Contractor subject to the approval of the CONREP

For each of Option Items 0008, 0015, and 0022, if exercised, separate 10,000 point progress measurement scales based on their respective costs of labor and materials will be utilized to determine progress as certified by the Contractor subject to the approval of the CONREP. Similarly, the Contracting Officer will make payments to the Contractor for work completed by the Contractor under Items 0009 through 00014, 0016 through 0021, and 0023 through 0028 if exercised or ordered, following certification of completion of the work by the Contractor subject to the approval of the CONREP. For work under Items 0009 through 00014, 0016 through 0021, and 0023 through 0028 for which work is not yet complete, the Contractor must submit to the CONREP, within 15 days after each calendar quarter for approval, a revised 10000 point weighting of the CLIN 0008, 0015 and 0022 progressing systems to include all labor and material costs exercised or ordered under CLINs 0009 through 0014, 0016 through 0021 and 0023 through 0028 from the previous calendar quarter. The revised weighting may, within a SWBS element, reallocate CLIN 0008, 0015 and 0022 labor and material costs as determined to be necessary by the Contractor subject to the approval of the CONREP

Progress payments may be submitted at monthly intervals; provided, however, that the aggregate of such payments made prior to the delivery of the vessel(s) by the Contractor to the Government shall not be in excess of 95 percent of the contract price for CLIN 0001 and if exercised, 95 percent of the contract price for each of the Option items 0008, 0015 and 0022. Progress shall be determined by the percentage of Contract work completed and material delivered to the Contractor at its Shipyard and paid for as shown by payment made by cash, check or other form of actual payment, as certified by the Contractor subject to approval of the CONREP.

The Contractor agrees that it shall not allow liens, security interest or rights in rem of any kind arising out of the Contract work, or on account of any claim against the Contractor or against the subcontractor of the Contractor performing work or furnishing material under this Contract to lie or attach against the vessels or any of said property, material, or Contract work.

The amounts withheld under the provisions of this Section, plus any other amounts payable to the Contractor under the terms of this Contract shall be paid (except amounts withheld for liquidated damages and any offset required by law) as follows:

(i) All except 2 1/2 percent of the Contract price for CLIN 0001 through 0007 and if exercised, Option items 0008 through 0014, 0015 through 0021 and 0022 through 0028 shall be payable promptly after the preliminary acceptance of the vessel(s).

(ii) The balance of the Contract price for CLIN 0001 through 0007 and if exercised,

Option items 0008 through 0014 , 0015 through 0021 and 0022 through 0028 shall be paid within 30 days of the end of the Guarantee period(s), provided all contractual obligations have been satisfied.

No payments on account of the Contract price shall be made except on submitted bills, vouchers, or invoices which shall be in such number and form and shall be executed, certified, and attested in accordance with the clause in Section I of this contract entitled PROMPT PAYMENT (JUN 1997).

The Contractor shall maintain a file of all purchase orders issued and subcontracts entered into by the Contractor in the performance of the Contract work and shall furnish copies of such priced purchase orders and subcontracts to the Contracting Officer as may be required.

At any time or times prior to final payment under this contract, the Contracting Officer may have any invoices and statements or certifications of costs audited. The Contracting Officer may require the Contractor to submit, or make available for examination by the Contracting Officer or his designated representative, the supporting documentation upon which invoices, statements or certifications of costs are based. Each payment theretofore made shall be subject to reduction as necessary to reflect the exclusion of amounts included in the invoices or statements or certifications of costs which are found by the Contracting Officer, on the basis of such audit, not to constitute allowable costs. Any payment may be reduced for over-payments, or increased for underpayment on preceding invoices.

H-6 AWARD FEE

(a) In addition to the prices specified in Section B for Item 0001, and if exercised, Items 0008, 0015, and 0022, the Contractor may earn award fee as determined by the Fee Determining Official (FDO). While not a traditional award fee, the Government's purpose in granting this incentive bonus is to encourage and reward superior Contractor effort toward performance of this contract by periodically reviewing the Contractor's effectiveness in (1) ensuring timely ship delivery, (2) management (including relationships with the Government, the SSVs and the Noise Control Engineering Firm), and (3) design/engineering, noise/vibration, weight control/stability, production, and logistics. It is recognized that the standards by which the Contractor's performance is to be gauged are not susceptible to precise definition; however, these are the general areas on which particular emphasis will be placed. These evaluation categories are presented in approximate descending order of importance. However, the Contracting Officer may from time to time modify the relative weights of the evaluation categories and modify the distribution of available award fee dollar amounts set forth in paragraph (g), provided that the Contracting Officer notifies the Contractor prior to the beginning of each evaluation period for which the changes will be effective. These modifications shall not change the total available award fee potential provided by this clause nor change the award fee earned by the Contractor in any completed evaluation period.

[Modification 0008] For CLIN 0001 only:

- (a.1) The Government has selected the submission of schedule data as specified in sections 042f and 042i of Revision E of the SOR dated December 18, 2002 and the reduction of acoustic signature as the areas in which award fee will be made available. None of the costs incurred by the Contractor in performing the narrow band acoustic signature reduction work described in paragraph (e.4) and in performing the work associated with the incentive related to submission of schedule data shall be compensated other than under the award fee provision.
- (a.2) The criteria by which the Contractor's performance is to be gauged relative to providing monthly schedule data are:
- (1) Timeliness – All deliverables will be provided no later than the 15th of each month detailing progress through the end of the previous month.
 - (2) Accuracy – All deliverables will reflect actual physical progress and realistic and actual dates of various events. All deliverables will contain the most current information available.
 - (3) Completeness - All deliverables will contain all data as required per sections 042f and 042i of Revision E of the SOR dated December 18, 2002.
 - (4) Integration – Schedule, date, and progress information shall be consistent between deliverables and with monthly progress billings. Schedule information detailing the initiation, separation, and merging of events will be consistent between the deliverables.
 - (5) Format - A consistent format will be adopted for each deliverable and the deliverable will be provided in the same consistent format each month.

The aforementioned evaluation criteria for providing monthly schedule data are weighted equally in importance and it will be the Contractor's responsibility to meet all five criteria in order to qualify for the incentive bonus. The Contractor's performance relative to the aforementioned criteria will be evaluated in accordance with paragraph (h.1).

- (a.3) With respect to reducing acoustic signature, award fee will be determined based on the accomplishment of milestones. The Contractor shall perform the scope of work detailed in paragraph (e.4) and will be paid for each milestone successfully accomplished in accordance with the award fee milestone criteria provided in paragraph (g.2). The Contractor's performance relative to the achievement of milestones will be evaluated in accordance with paragraph (h.1). [Modification 0008]

[Modification 0018] For CLIN 0008 only:

- (a.4) The Government has selected the submission of schedule data as specified in sections 042f and 042i of Revision -- of the SOR for FSV40-2 dated June 10, 2003 as the area in which award fee will be made available. None of the costs incurred by the Contractor in performing the work associated with the incentive related to submission of schedule data shall be compensated other than under the award fee provision.
- (a.5) The criteria by which the Contractor's performance is to be gauged relative to providing monthly schedule data are:
 - (1) Timeliness – All deliverables will be provided no later than the 15th of each month detailing progress through the end of the previous month.
 - (2) Accuracy – All deliverables will reflect actual physical progress and realistic and actual dates of various events. All deliverables will contain the most current information available.
 - (3) Completeness - All deliverables will contain all data as required per sections 042f and 042i of Revision E of the SOR dated December 18, 2002.
 - (4) Integration – Schedule, date, and progress information shall be consistent between deliverables and with monthly progress billings. Schedule information detailing the initiation, separation, and merging of events will be consistent between the deliverables.
 - (5) Format - A consistent format will be adopted for each deliverable and the deliverable will be provided in the same consistent format each month.

The aforementioned evaluation criteria for providing monthly schedule data are weighted equally in importance and it will be the Contractor's responsibility to meet all five criteria in order to qualify for the incentive bonus. The Contractor's performance relative to the aforementioned criteria will be evaluated in accordance with paragraph (h.1).

- (b) The Government, at its sole discretion, may decide to provide funds under Item 0001, and if exercised, Items 0008, 0015, and 0022 to be made available under this award fee provision.

The amount of this funding, if any, will be determined by the Government after contract award and incorporated into the contract through a unilateral contract modification. The Government may increase or decrease the amount of the funding provided, if any, from time to time as necessary.

- (c) The Contractor's performance evaluation for each period will be conducted by an Evaluation Board consisting of no less than four of the following members:

- (i) NOAA FRV-40 Acquisition Manager, Chairman;
- (ii) NOAA FRV-40 NMFS Deputy Program Manager;
- (iii) [Modification 0017] Contracting Officer (CO) or Representative (non-

voting member);[Modification 0017]

- (iv) Senior NOAA On-Site Construction Representative;
- (v) NOAA FRV-40 Project Engineer;

[Modification 0008][Modification 0018] For CLIN 0001 and CLIN 0008 only:[Modification 0018]

(c.1) The Contractor's performance evaluation for each period and for each milestone will be conducted by an Evaluation Board consisting of the following members:

- (i) NOAA FRV-40 Program and Acquisition Manager, Chairman;
- (ii) NOAA FRV-40 Deputy Acquisition Manager;
- (iii) [Modification 0017]Contracting Officer (CO) (non-voting member);[Modification 0017]
- (iv) NOAA On-Site Construction Representative. [Modification 0008]

(d) [Modification 0009] The Fee Determining Official (FDO) will be the Deputy Director, NOAA Marine and Aviation Operations.[Modification 0009] The FDO shall determine the award fee, if any, that the contractor will be awarded in accordance with the procedures set forth herein.

(e) For each ship under the contract, the contract performance period will be divided into not more than six evaluation periods of approximately six months duration within a thirty-six month delivery schedule, plus a final seventh evaluation after the end of the guaranty period. These intervals and the number of evaluation periods may be modified by the Government for delivery schedules other than thirty-six months in duration. The Evaluation Board will meet at the close of each evaluation period. The Board will consider evaluations of the Contractor's performance from the Government's on-site team and, as appropriate, from other Government participants in the FRV-40 acquisition. The Contractor may furnish a self-evaluation of its performance for the Board to consider. Additionally, the Board may request information from the SSVs and the Noise Control Engineering Firm regarding the Contractor's performance, and the Board may utilize the services of third party experts for the evaluation of specific technical issues as necessary.

The Board will arrive at a scoring consensus and provide a written recommendation and rationale to the FDO. The Board's recommendation will also be furnished to the Contractor, who will be given five calendar days to provide written comments to the FDO. In the event that the Contractor does not concur with the recommendation, it may present its exception to the FDO. These comments will be considered by the FDO in establishing the earned award fee amount. The FDO shall, within ten days of receipt of any Contractor comments, make the award fee determination (including the amount and rationale for the determination) to be incorporated

into the contract formally via contract modification. Any award fee earned by the Contractor shall be conferred to the Contractor by the execution of a contract modification within thirty (30) days and shall not be subject to any payment withholding percentage, notwithstanding any other provision of this contract.

[Modification 0008] For CLIN 0001 only:

- (e.1) Schedule data will be evaluated on a quarterly basis resulting in seven evaluation periods of three months duration each, plus a final eighth evaluation after the end of the guaranty period. The first incentive period will commence from 1 January 2003 through 31 March 2003. The Evaluation Board will meet at the close of each evaluation period. The Board will consider the five criteria specified in paragraph (a.2) when determining the Contractor's compliance in submitting schedule data as specified in sections 042f and 042i of Revision E of the SOR dated December 18, 2002.
- (e.2) Reduction of acoustic signature will be evaluated based on achievement of milestones as defined in paragraph (g.2). The Evaluation Board will meet after each milestone is reached. The Board will review the deliverables required to document achievement of milestones as specified in the scope of work for reduction of acoustic signature in section III of paragraph (e.4), modifications made as a result of NCEF recommendations, and acoustic test results when determining the Contractor's success in achieving milestones.
- (e.3) Successful accomplishment of schedule data submission and acoustic signature reduction milestones will be determined by the FDO based upon recommendations of the Evaluation Board.
- (e.4) Scope of work for reduction of acoustic signature:
 - I. Perform acoustic analyses, design and construction testing, and provide acoustic treatments.

Additional effort to be undertaken by the NCEF:

- a. Empirically adjust broadband predictions to narrow band predictions for comparison to the ICES criterion.
- b. Use narrow band acoustic FAT test data to develop the empirical adjustments used in the prediction process.
- c. Review output of the model and develop optimal damping treatment recommendations.
- d. Conduct acoustic calibration of dockside area and two dockside vibration and over side radiated noise surveys to determine the narrow band contribution for critical sources.
- e. Advise the Contractor on recommended changes in treatments/ship design to meet the narrow band ICES requirements.

- f. Conduct an at-sea (deep water) radiated noise survey prior to range testing as specified in the SOR.

The diagnostic tests shall consist of a calibration test (item Id), two dockside acoustic tests (item Id) during construction, and a final at-sea radiated noise test (item If). The calibration test shall be conducted with a known underwater acoustic source or loudspeaker, which will allow the Contractor to estimate the far-field noise based on measurements taken in a confined channel. The accuracy of this measurement method shall be addressed by the Contractor prior to undertaking any extensive modifications and shall be discussed in deliverable III B of paragraph (e.4).

The NCEF shall then conduct radiated noise measurements and onboard noise and vibration measurements two times during the construction. The first set of measurements shall cover auxiliary equipment that can be operated from shore power - especially pumps of sea-connected systems. The second set of measurements shall cover transformers, compressors and all other auxiliary equipment that can be run from shore power.

During these tests, hydrophones shall be suspended over the side of the vessel and also at various distances from the vessel. Noise and vibration measurements on the operating equipment and along the acoustic path shall be taken at the same time as the radiated noise measurements. The placement of the hydrophones depends on the depth of water in the channel and the background noise expected in the channel. Each survey is expected to take three NCEF engineers up to 5 days on-site. The Contractor shall provide a small craft which shall be anchored at various locations in the channel with the motor secure during tests to position the hydrophones. The Contractor shall have personnel on site to run equipment and provide a craft for placement of the hydrophones. These tests shall be conducted with minimum channel traffic and no other activity on the vessel itself. Narrow band and wide band data shall be collected.

The NCEF shall determine if any particular system is likely to exceed the incentive goals. If an excess is expected, NCEF shall conduct diagnostic tests on that system to determine viable methods to abate this noise. Recommendations shall be provided to the Contractor by the NCEF for evaluation and installation and to the Government for information. If there is a tonal excess, the Contractor shall decide whether to implement these treatments based on a cost/benefit analysis. All recommended treatments shall be installed to achieve Milestone No. 2 and subsequent milestones.

An at-sea test (item If) shall serve as the final check prior to the official range testing. This test shall be conducted as early as feasible in order to allow time for corrective action, if needed. Provide tone reduction verification and treatment.

If an excessive tone(s) is (are) identified during formal range testing, the NCEF

shall conduct narrow band diagnostic tests to determine the equipment item/system producing the tone(s). These tests shall be used by the NCEF to identify whether the excess source was induced by airborne noise, structure borne noise or fluid borne noise. Additional noise, vibration and near-field underwater surveys shall be conducted by the NCEF as part of the diagnostic test. If the source is structure borne induced, these tests shall include vibration measurements on the unit to determine the source vibration level, vibration level in the foundation and vibration level on the hull. If the source is airborne, additional noise levels shall be measured near the source and near the hull side. Fluid borne noise shall be traced by a combination of vibration levels near the hull connections and underwater noise measurements near the sea connection. These types of diagnostics shall be used to determine acoustic level and acoustic transmission path causing the tonal excess(es). The NCEF shall recommend and document the treatments required to eliminate tonal excesses.

If there is (are) a tonal excess(es), the Contractor shall decide whether to implement these treatments based on a cost/benefit analysis. Once an optimal treatment is selected and installed the diagnostic tests shall be repeated to determine the reduction in acoustic levels at the frequency of interest. If the treatments are installed, a final verification radiated noise test shall be conducted in deep water. The Contractor shall provide the NCEF's recommendations, whether implemented or not, to the Government.

- II. Provide the following technical documentation as deliverables:
 - A. Provide detailed purchase order to NCEF incorporating additional efforts as detailed in Section I above. This is to be submitted under DRL A006.
 - B. Provide a detailed report documenting the accuracy of and assumptions necessary to use the calibration test results in furtherance of the acoustic incentive process. Report to be submitted under DRL A016.
 - C. Provide detailed reports of recommendations developed and tests conducted in response to Section I above for additional acoustic treatments to meet 100% award level. Report to be submitted under DRL A016.
 - D. Provide detailed reports of results of tests and of recommendations to eliminate tonal excesses discovered during acoustic range testing as required by Section II above. Report to be submitted under DRL A016. [Modification 0008]

[Modification 0020] For CLIN 0008 only:

- (e.5) Schedule data will be evaluated on a quarterly basis resulting in seven evaluation periods of three months duration each, plus a final eighth evaluation after the end of the guaranty period. The first incentive period will commence from 1 January 2004 through 31 March 2004. The Evaluation Board will meet at the close of each evaluation period. The Board will consider the five criteria specified in paragraph (a.2) when determining the Contractor's compliance in submitting schedule data as

specified in sections 042f and 042i of Revision E of the SOR dated December 18, 2002.

- (e.6) Reduction of acoustic signature will be evaluated based on achievement of milestones as defined in paragraph (g.4). The Evaluation Board will meet after each milestone is reached. The Board will review the deliverables required to document achievement of milestones as specified in the scope of work for reduction of acoustic signature in section III of paragraph (e.8), modifications made as a result of NCEF recommendations, and acoustic test results when determining the Contractor's success in achieving milestones.
- (e.7) Successful accomplishment of schedule data submission and acoustic signature reduction milestones will be determined by the FDO based upon recommendations of the Evaluation Board.
- (e.8) Scope of work for reduction of acoustic signature:

III. Perform acoustic analyses, design and construction testing, and provide acoustic treatments.

Additional effort to be undertaken by the NCEF:

- a. Empirically adjust broadband predictions to narrow band predictions for comparison to the ICES criterion.
 - b. Use narrow band acoustic FAT test data to develop the empirical adjustments used in the prediction process.
 - c. Review output of the model and develop optimal damping treatment recommendations.
 - d. Conduct acoustic calibration of dockside area and two dockside vibration and over side radiated noise surveys to determine the narrow band contribution for critical sources.
 - e. Advise the Contractor on recommended changes in treatments/ship design to meet the narrow band ICES requirements.
 - f. Conduct an at-sea (deep water) radiated noise survey prior to range testing as specified in the SOR.

The diagnostic tests shall consist of a calibration test (item Id), two dockside acoustic tests (item Id) during construction, and a final at-sea radiated noise test (item If). The calibration test shall be conducted with a known underwater acoustic source or loudspeaker, which will allow the Contractor to estimate the far-field noise based on measurements taken in a confined channel. The accuracy of this measurement method shall be addressed by the Contractor prior to undertaking any extensive modifications and shall be discussed in deliverable III B of paragraph (e.8).

The NCEF shall then conduct radiated noise measurements and onboard noise and vibration measurements two times during the construction. The first set of

measurements shall cover auxiliary equipment that can be operated from shore power - especially pumps of sea-connected systems. The second set of measurements shall cover transformers, compressors and all other auxiliary equipment that can be run from shore power.

During these tests, hydrophones shall be suspended over the side of the vessel and also at various distances from the vessel. Noise and vibration measurements on the operating equipment and along the acoustic path shall be taken at the same time as the radiated noise measurements. The placement of the hydrophones depends on the depth of water in the channel and the background noise expected in the channel. Each survey is expected to take three NCEF engineers up to 5 days on-site. The Contractor shall provide a small craft which shall be anchored at various locations in the channel with the motor secure during tests to position the hydrophones. The Contractor shall have personnel on site to run equipment and provide a craft for placement of the hydrophones. These tests shall be conducted with minimum channel traffic and no other activity on the vessel itself. Narrow band and wide band data shall be collected.

The NCEF shall determine if any particular system is likely to exceed the incentive goals. If an excess is expected, NCEF shall conduct diagnostic tests on that system to determine viable methods to abate this noise. Recommendations shall be provided to the Contractor by the NCEF for evaluation and installation and to the Government for information. If there is a tonal excess, the Contractor shall decide whether to implement these treatments based on a cost/benefit analysis. All recommended treatments shall be installed to achieve Milestone No. 2 and subsequent milestones.

An at-sea test (item If) shall serve as the final check prior to the official range testing. This test shall be conducted as early as feasible in order to allow time for corrective action, if needed. Provide tone reduction verification and treatment.

If an excessive tone(s) is (are) identified during formal range testing, the NCEF shall conduct narrow band diagnostic tests to determine the equipment item/system producing the tone(s). These tests shall be used by the NCEF to identify whether the excess source was induced by airborne noise, structure borne noise or fluid borne noise. Additional noise, vibration and near-field underwater surveys shall be conducted by the NCEF as part of the diagnostic test. If the source is structure borne induced, these tests shall include vibration measurements on the unit to determine the source vibration level, vibration level in the foundation and vibration level on the hull. If the source is airborne, additional noise levels shall be measured near the source and near the hull side. Fluid borne noise shall be traced by a combination of vibration levels near the hull connections and underwater noise measurements near the sea connection. These types of diagnostics shall be used to determine acoustic level and acoustic transmission path causing the tonal excess(es). The NCEF shall recommend and document the treatments required to eliminate tonal excesses.

If there is (are) a tonal excess(es), the Contractor shall decide whether to implement these treatments based on a cost/benefit analysis. Once an optimal treatment is selected and installed the diagnostic tests shall be repeated to determine the reduction in acoustic levels at the frequency of interest. If the treatments are installed, a final verification radiated noise test shall be conducted in deep water. The Contractor shall provide the NCEF's recommendations, whether implemented or not, to the Government.

IV. Provide the following technical documentation as deliverables:

- E. Provide detailed purchase order to NCEF incorporating additional efforts as detailed in Section I above. This is to be submitted under DRL A006.
- F. Provide a detailed report documenting the accuracy of and assumptions necessary to use the calibration test results in furtherance of the acoustic incentive process. Report to be submitted under DRL A016.
- G. Provide detailed reports of recommendations developed and tests conducted in response to Section I above for additional acoustic treatments to meet 100% award level. Report to be submitted under DRL A016.
- H. Provide detailed reports of results of tests and of recommendations to eliminate tonal excesses discovered during acoustic range testing as required by Section II above. Report to be submitted under DRL A016. [Modification 0020]

(f) Determinations of the FDO with respect to the amount of award fee to be paid to the Contractor are final and shall not be subject to the "DISPUTES" clause of this contract, nor shall the Contractor be entitled to submit a claim regarding any such determination under the Contract Disputes Act of 1978 (P.L. 95-563).

(g) Award fee, if funded, will be made available as follows:

<u>Evaluation Period</u>	<u>Award Fee Available</u>	<u>Award Fee Earned</u>
First Period	TBD	TBD
Second Period	TBD	TBD
Third Period	TBD	TBD
Fourth Period	TBD	TBD
Fifth Period	TBD	TBD
Sixth Period	TBD	TBD
End Guaranty	TBD	TBD
TOTAL	TBD	TBD

Unearned award fee for any period will not be made available for any subsequent period.

[Modification 0008] For CLIN 0001 only:

(g.1) Award fee for providing monthly schedule data will be made available as follows:

<u>Evaluation Period</u>	<u>Award Fee Available</u>	<u>Award Fee Earned</u>
(1) 1 Jan 03 – 31 Mar 03	\$10,000 [Modification 0017]	\$0.00
(2) 1 Apr 03 – 30 Jun 03	\$10,000	\$10,000[Modification 0017]
(3) 1 Jul 03 – 30 Sept 03	\$10,000[Modification 0018]	\$10,000 [Modification 0018]
(4) 1 Oct 03 – 31 Dec 03	\$10,000[Modification 0019]	\$10,000 [Modification 0019]
(5) 1 Jan 04 – 31 Mar 04	\$10,000	
(6) 1 Apr 04 – 30 Jun 04	\$10,000	
(7) 1 Jul 04 – 30 Sept 04	\$10,000	
(8) End of Guaranty	\$10,000	

In order for the Contractor to receive the incentive payment for schedule data submission, all five of the evaluation criteria specified in paragraph (a.2) must obtain a pass rating as described in paragraph (h.1). If any one, or more, of the five evaluation criteria receive a fail rating, the Contractor will be ineligible for the incentive payment.

- (g.2) Award fee for accomplishment of milestones relative to acoustic signature reduction will be made available as follows:

Milestone No.	Milestone Criteria	Award Fee Available	Award Fee Earned
1.	At issuance of P.O. to NCEF to perform the work described in the scope of work for narrow band acoustic signature reduction	\$100,000	[Modification 0018] \$100,000 [Modification 0018]
2.	At the completion of all work for narrow band acoustic signature reduction described in section I of paragraph e.4	\$300,000	
3.	At preliminary acceptance, successfully demonstrate only one of the following:		
	2 Tonals that are greater than 3 dB above, but not more than 6 dB above the narrow band ICES standard from 10 Hz to 2 KHz	\$25,000	
	1 Tonal that is greater than 3 dB above, but not more than 6 dB above the narrow band ICES standard from 10 Hz to 2 KHz	\$50,000	
	1 Tonal that is greater than 3 dB above, but not more than 6 dB above the narrow band ICES standard from 10 Hz to 2 KHz and no Tonal that exceeds the narrow band ICES standard by more than 3 dB from 20 Hz to 300Hz	\$75,000	

	1 Tonal that is greater than 3 dB above, but not more than 6 dB above the narrow band ICES standard from 10 Hz to 2 KHz and no other Tonals that exceed the narrow band ICES standard by more than 3 dB from 20 Hz to 1 KHz	\$100,000	
	No Tonals greater than 3 dB above the narrow band ICES standard from 10 Hz to 2 KHz	\$125,000	
	No Tonals greater than 3 dB above the narrow band ICES standard from 10 Hz to 2 KHz and no Tonals that exceed the narrow band ICES standard from 20 Hz to 300 Hz	\$150,000	
	No Tonals that exceed the narrow band ICES standard from 10 Hz to 1 KHz and no Tonals greater than 3 dB above the narrow band ICES standard from 1 KHz to 2 KHz	\$200,000	
	No Tonals that exceed the narrow band ICES standard from 10 Hz to 1.2 KHz and no Tonals greater than 3 dB above the narrow band ICES standard from 1.2 KHz to 2 KHz	\$225,000	
	No Tonals that exceed the narrow band ICES standard from 10 Hz to 2 KHz	\$250,000	
	Total Award Fee Available =	\$650,000	

In order for the Contractor to receive incentive payment for acoustic signature reduction, the accomplishment of the milestone must receive a pass rating as described in paragraph (h.1).

Unearned award fee for any period or milestone will not be made available for any subsequent period or milestone. [Modification 0008]

[Modification 0018] For CLIN 0008 only:

(g.3) Award fee for providing monthly schedule data will be made available as follows:

<u>Evaluation Period</u>	<u>Award Fee Available</u>	<u>Award Fee Earned</u>
(1) 1 Jan 04 – 31 Mar 04	\$10,000	
(2) 1 Apr 04 – 30 Jun 04	\$10,000	
(3) 1 Jul 04 – 30 Sept 04	\$10,000	
(4) 1 Oct 04 – 31 Dec 04	\$10,000	
(5) 1 Jan 05 – 31 Mar 05	\$10,000	
(6) 1 Apr 05 – 30 Jun 05	\$10,000	
(7) 1 Jul 05 – 30 Sept 05	\$10,000	
(8) 1 Oct 05 – 31 Dec 05	\$10,000	
(9) 1 Jan 06 – 31 Mar 06	\$10,000	
(10) End of Guaranty	\$10,000	

In order for the Contractor to receive the incentive payment for schedule data submission, all five of the evaluation criteria specified in paragraph (a.2) must obtain a pass rating as described in paragraph (h.1). If any one, or more, of the five evaluation criteria receive a fail rating, the Contractor will be ineligible for the incentive payment. [Modification 0018]

[Modification 0020]

- (g.4) Award fee for accomplishment of milestones relative to acoustic signature reduction will be made available as follows:

Milestone No.	Milestone Criteria	Award Fee Available	Award Fee Earned
1.	At issuance of P.O. to NCEF to perform the work described in the scope of work for narrow band acoustic signature reduction	\$70,000	
2.	At the completion of all work for narrow band acoustic signature reduction described in section I of paragraph e.4	\$265,000	
3.	At preliminary acceptance, successfully demonstrate only one of the following:		
	2 Tonals that are greater than 3 dB above, but not more than 6 dB above the narrow band ICES standard from 10 Hz to 2 KHz	\$25,000	
	1 Tonal that is greater than 3 dB above, but not more than 6 dB above the narrow band ICES standard from 10 Hz to 2 KHz	\$50,000	
	1 Tonal that is greater than 3 dB above, but not more than 6 dB above the narrow band ICES standard from 10 Hz to 2 KHz and no Tonal that exceeds the narrow band ICES standard by more than 3 dB from 20 Hz to 300Hz	\$75,000	
	1 Tonal that is greater than 3 dB above, but not more than 6 dB above the narrow band ICES standard from 10 Hz to 2 KHz and no other Tonals that exceed the narrow band ICES standard by more than 3 dB from 20 Hz to 1 KHz	\$100,000	
	No Tonals greater than 3 dB above the narrow band ICES standard from 10 Hz to 2 KHz	\$125,000	
	No Tonals greater than 3 dB above the narrow band ICES standard from 10 Hz to 2 KHz and no Tonals that exceed the narrow band ICES standard from 20 Hz to 300 Hz	\$150,000	

Milestone No.	Milestone Criteria	Award Fee Available	Award Fee Earned
	No Tonals that exceed the narrow band ICES standard from 10 Hz to 1 KHz and no Tonals greater than 3 dB above the narrow band ICES standard from 1 KHz to 2 KHz	\$175,000	
	No Tonals that exceed the narrow band ICES standard from 10 Hz to 1.2 KHz and no Tonals greater than 3 dB above the narrow band ICES standard from 1.2 KHz to 2 KHz	\$200,000	
	No Tonals that exceed the narrow band ICES standard from 10 Hz to 2 KHz	\$215,000	
	Total Award Fee Available =	\$550,000	

In order for the Contractor to receive incentive payment for acoustic signature reduction, the accomplishment of the milestone must receive a pass rating as described in paragraph (h.1). [Modification 0020]

(h) Performance Ratings.

In evaluating Contractor performance, the following adjectives and numerical ratings will be used:

Adjective Rating Numerical Value Criteria

Excellent **96-100** The Contractor's degree of cooperation with the Government, or its effort towards achieving the objectives set forth in paragraph (a) above exceeds the expected level of performance by a substantial margin. While there may be one or more areas for improvement, they are few in number, are minor in terms of potential program impact, and they are far more than offset by outstanding performance in other areas.

Good **85-95** The Contractor's degree of cooperation with the Government, or its effort towards achieving the objectives set forth in paragraph (a) above is above the expected level of performance. Areas requiring improvement may be significant, but are more than offset by higher performance in other areas being evaluated.

Acceptable **76-84** The Contractor's degree of cooperation with the Government, or its effort towards achieving the objectives set forth in paragraph (a) above meets the expected level of performance. There are areas requiring improved performance; however, these are offset by better performance in other areas.

Marginal **71-75** The Contractor's degree of cooperation with the Government, or its effort towards achieving the objectives set forth in paragraph (a) above is less than the expected level of performance by a substantial margin. Many areas require improvement which are not offset by better performance in other areas.

Unacceptable **70 and below** The Contractor's performance is significantly below the expected level performance in several important areas.

[Modification 0008] For CLIN 0001 [Modification 0020] and CLIN 0008 [Modification 0020] only:

- (h.1) In evaluating Contractor performance relative to providing monthly schedule data and achievement of acoustic signature reduction milestones, the following adjectives will be used:

Adjective Rating Criteria

Pass

The Contractor meets or exceeds the expected level of performance as defined in the criteria for schedule data submission in paragraph (a.2) above or the scope of work for acoustic signature reduction in paragraph (e.4) above.

Fail

The Contractor provides less than the expected level of performance as defined in the criteria for schedule data submission in paragraph (a.2) above or the scope of work for acoustic signature reduction in paragraph (e.4) above.
[Modification 0008]

- (i) The relationship of the performance rating to the percentage of award fee pool to be paid, will be as follows:

<u>Performance Rating</u>	<u>Percent of Award Fee Pool</u>
0-70:	0
71-100:	$\frac{[(\text{Rating} - 70)]}{[30]} \times 100$

[Modification 0008] For CLIN 0001 [Modification 0020] and CLIN 0008 [Modification 0020] only:

- (i.1) The available award fee amount specified in paragraph (g.1) will be paid if a rating of pass is achieved for all five of the schedule data submission criteria specified in paragraph (a.2). The available award fee amount specified in paragraph (g.2) will be paid as milestones for acoustic signature reduction specified in paragraph (g.2) are achieved and obtain a pass rating. [Modification 0008]

(j) Payment of Award Fee. The Contractor shall be paid earned award fee, if any, upon submission of a proper invoice or voucher.

H-7 PERFORMANCE AND PAYMENT BONDS --Other Than Construction (Sep 1996)

(a) *Definitions.* As used in this clause--

"Contract price" means the total price of Contract Line Item 0001, and if exercised, Items 0008, 0015 and 0022.

(b) The Contractor shall furnish a performance bond (Standard Form 1418) for the protection of the Government in an amount equal to 20 percent of the contract price and a payment bond (Standard Form 1416) in an amount equal to 20 percent of the contract price.

(c) The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, within 10 days, but in any event, before starting work.

(d) The Government may require additional performance bond protection when the contract price is increased. The Government may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(e) The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the *Federal Register*, or may be obtained from the:

U.S. Department of Treasury
 Financial Management Service
 Surety Bond Branch
 401 14th Street, NW, 2nd Floor, West Wing
 Washington, DC 20227

[Modification 0022](f) Performance and payment bonds in the amounts required for CLINs 0008, 0015 and 0022, if exercised, are each required within 10 days of exercise of sub-CLINs 0008AE, 0015AE and 0022AE, as appropriate, but in any event prior to starting work on the respective Sub-CLIN 0008AE, 0015AE and 0022AE [Modification 0022].

H-8 SINGLE SYSTEM VENDORS AND NOISE CONTROL ENGINEERING FIRM

(a) The Contractor agrees to place and to maintain in force through the life of this contract, subcontracts with the Single System Vendors (SSVs) and the Noise Control Engineering Firm (NCEF) identified in its proposal, and that the contract price includes the prices of these subcontracts. No substitutions shall be made without the written consent of the Contracting Officer. Any requests for substitutions must provide a complete explanation of the circumstances necessitating the proposed substitution. The proposed substitute subcontractor must possess qualifications equivalent to the firm being replaced.

(b) The Contractor agrees to implement the recommendations of the SSVs and the NCEF in all aspects of the design and construction of the vessel(s) under this contract, unless, on a case-by-case basis, the Contractor can demonstrate to the satisfaction of the Contracting Officer that a specific recommendation is erroneous or otherwise cannot reasonably be implemented.

[Modification 0022]

H-9 NOTICE-TO-PROCEED

The Contractor is not authorized to expend any funding applied to Sub-CLIN 0015AD or to Sub-CLIN 0022AD (if applicable) prior to receipt of a written Notice-to-Proceed from the Government. The written Notice-to-Proceed will include a list of long lead materials which may be procured by the Contractor under Sub-CLIN 0015AD or 0022AD as appropriate. No other materials or expenditures are authorized under this Notice-to-Proceed. [Modification 0022]